

the serviceability, including appearance as well as usability, of the container for its intended purpose and certifying the results.

(k) *Observation of loading service.* This service consists of official personnel determining that an identified lot has been moved from a warehouse or carrier and loaded into another warehouse or carrier and certifying the results.

(l) *Plant approval service.*<sup>1</sup> This service consists of official personnel performing a plant survey to determine if the plant premises, facilities, sanitary conditions, and operating methods are suitable to begin or continue inspection service.

(m) *Stowage examination service.* This service consists of official personnel visually determining if an identified carrier or container is clean; dry; free of infestation, rodents, toxic substances and foreign odor; and suitable to store or carry commodities and certifying the results.

#### **§ 868.32 Who shall inspect commodities.**

Official commodity inspections shall be performed only by official personnel.

#### **§ 868.33 Sample requirements; general.**

(a) *Samples for lot inspection service—*

(1) *Original lot inspection service.* The sample(s) on which the original inspection is determined shall be—

- (i) Obtained by official personnel;
- (ii) Representative of the commodity in the lot;
- (iii) Protected by official personnel from manipulation, substitution, and improper or careless handling; and
- (iv) Obtained within the prescribed area of responsibility of the cooperator or field office performing the inspection service.

(2) *Retest lot inspection service.* The sample(s) on which the retest is determined shall meet the requirements of paragraph (a)(1) of this section. The retest inspection shall be performed on the basis of a file sample(s), and the

samples shall meet the requirements prescribed in § 868.35(e).

(3) *Appeal lot inspection service.* For an appeal lot inspection service, the sample(s) on which the appeal is determined shall meet the requirements of paragraph (a)(1) of this section. If the appeal inspection is performed on the basis of a file sample(s), the samples shall meet the requirements prescribed in § 868.35(e). In accordance with § 868.61(b), an applicant may request that a new sample be obtained and examined as part of the appeal inspection service.

(4) *Board appeal lot inspection service.* A Board appeal lot inspection service shall be performed on the basis of file sample.

(b) *Sampler requirement.* An official sampler shall sample commodities and forward the samples to the appropriate cooperator or field office or other location as specified. A sampling report signed by the sampler shall accompany each sample. The report shall include the identity, quantity, and location of the commodity sampled; the name and mailing address of the applicant; and all other information regarding the lot as may be required.

(c) *Representative sample.* A sample shall not be considered representative of a commodity lot unless the sample—

- (1) Has been obtained by official personnel;
- (2) Is of the size prescribed in the instructions; and
- (3) Has been obtained, handled, and submitted in accordance with the instructions.

(d) *Protecting samples.* Official personnel shall protect samples from manipulation, substitution, and improper and careless handling which would deprive the samples of their representativeness or which would change the physical and chemical properties of the commodity from the time of sampling until inspection services are completed and file samples have been discarded.

[53 FR 3722, Feb. 9, 1988. Redesignated and amended at 60 FR 16364, Mar. 30, 1995]

#### **§ 868.34 Partial inspection.**

When the entire lot is not accessible for examination or a representative sample cannot be obtained from the entire lot, the certificate shall state the

<sup>1</sup>Compliance with the requirements in this paragraph does not excuse failure to comply with all applicable sanitation rules and regulations of city, county, State, Federal, or other agencies having jurisdiction over such plants and operations.

estimated quantity of the commodity in the accessible portion and the quantity of the entire lot. The inspection shall be limited to the accessible portion. In addition, the words "Partial Inspection" shall be printed or stamped on the certificate.

**§ 868.35 Sampling provisions by level of service.**

(a) *Original inspection service*—(1) *Lot inspection service.* Each original lot inspection service shall be made on the basis of one or more representative samples obtained by official personnel from the commodity in the lot and forwarded to the appropriate location.

(2) *Submitted sample service.* Each original submitted sample inspection service shall be performed on the basis of the sample as submitted.

(b) *Retest inspection service.* Each retest inspection service performed on a commodity lot or a submitted sample shall be based on an analysis of the file sample.

(c) *Appeal inspection service*—(1) *Lot inspection service.* Each appeal inspection service on a commodity lot shall be made on the basis of a file sample or, upon request, a new sample.

(2) *Submitted sample service.* Each appeal inspection service on the commodity in a submitted sample shall be based on an analysis of the file sample.

(d) *Board appeal inspection service.* Each Board appeal inspection service performed on a commodity lot or submitted sample shall be based on an analysis of the file sample.

(e) *Use of file samples*—(1) *Requirements for use.* A file sample that is retained by official personnel in accordance with the procedures prescribed in the instructions shall be considered representative for retest inspection, appeal inspection, and Board appeal inspection service if: (i) The file samples have remained at all times in the custody and control of the official personnel that performed the inspection service and (ii) the official personnel who performed the inspection service in question and those who are to perform the retest inspection, the appeal inspection, or the Board appeal inspection service determines that the samples were representative of the commodity at the time the inspection service

was performed and that the quality or condition of the commodity in the samples has not since changed.

(2) *Certificate statement.* The certificate for a retest inspection, appeal inspection, or Board appeal inspection service which is based on a file sample shall show the statement "Results based on file sample."

**§ 868.36 Loss of identity.**

(a) *Lots.* The identity of a packaged lot, bulk lot, or subplot of a commodity shall be considered lost if:

(1) A portion of the commodity is unloaded, transferred, or otherwise removed from the carrier or location after the time of original inspection, unless the identity is preserved; or

(2) More commodity or other material, including a fumigant or insecticide, is added to the lot after the original inspection was performed, unless the addition of the fumigant or insecticide was performed in accordance with the instructions; or

(3) At the option of official personnel performing an appeal inspection or Board appeal inspection service, the identity of a commodity in a closed carrier or container may be considered lost if the carrier or container is not sealed or the seal record is incomplete.

(b) *Carriers and containers.* The identity of a carrier or container shall be considered lost if (1) the stowage area is cleaned, treated, fumigated, or fitted after the original inspection was performed or (2) the identification has been changed since the original inspection.

(c) *Submitted sample.* The identity of a submitted sample of a commodity shall be considered lost if:

(1) The identifying number, mark, or symbol for the sample is lost or destroyed; or

(2) The sample has not been retained and protected by official personnel as prescribed in the regulations and the instructions.

ORIGINAL INSPECTION SERVICE

**§ 868.40 Who may request original inspection service.**

Any interested person may apply for inspection service.